

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

NEAL RUPIPER
ID #56849, Carroll County

ADMINISTRATIVE CONSENT ORDER
NO. 2007-AFO-19

TO: Neal Rupiper
25705 Jade Avenue
Carroll, Iowa 51401

I. SUMMARY

This administrative consent order is entered into between Neal Rupiper and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge at Mr. Rupiper's facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Matt Rhodes, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459A, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NEAL RUPIPER

III. STATEMENT OF FACTS

1. Neal Rupiper owns and operates an open cattle feedlot located at 25705 Jade Avenue, Carroll, Iowa (Section 21, T83N, R53W, Carroll County, Iowa). The facility has an animal capacity of approximately 520 animal units.

2. On August 17, 2005, DNR Field Office 4 conducted an open feedlot site assessment at Mr. Rupiper's facility. During the assessment, DNR Field Office 4 noted a possible area for a future discharge. Mr. Rupiper's north pens did not have a solids settling structure and was located near a road ditch and a channelized waterway. DNR Field Office 4 also noted a hole in the berm and a tile inside the hole. Mr. Rupiper was informed that if the tile was a tile inlet, it posed a significant water quality threat. During the visit, Mr. Rupiper was given until November 1, 2005 to submit a Plan of Action for improving the water quality and ensuring continued compliance at his facility. The Plan of Action was to be implemented by November 1, 2006. On August 23, 2005, DNR Field Office 4 sent Mr. Rupiper a letter with a summary of the assessment, as well as reminding him of the deadlines for the Plan of Action submittal and implementation. Following the letter, DNR Field Office 4 was informed Mr. Rupiper was working with NRCS to develop and install manure control structures.

3. On Friday, December 16, 2005, DNR Field Office 4 received an anonymous complaint stating manure was flowing into Brushy Creek. DNR Field Office 4 began the investigation the evening of December 16, 2005. Manure liquid was present in Brushy Creek. DNR Field Office 4 traced the manure to Mr. Rupiper's facility and took a water sample of the discharge from Mr. Rupiper's facility. The laboratory analysis of the sample yielded the following results: biochemical oxygen demand 630 milligrams/liter (mg/L); total suspended solids 520 mg/L; and ammonia 69 mg/L. Due to darkness, the investigation was suspended until Monday, December 19, 2005.

4. On December 19, 2005, DNR Field Office 4 continued its investigation. DNR Field Office 4 personnel observed dead fish, specifically carp, in Brushy Creek at the crossing of State Highway 71. DNR Fisheries were contacted regarding the fish kill.

5. On December 19, 2005, DNR Field Office 4 returned to Mr. Rupiper's facility. During the inspection, DNR Field Office 4 staff observed manure liquids flowing from Mr. Rupiper's feedlot to the road ditch to a tributary and then to Brushy Creek. There was evidence that manure solids had also reached the tributary.

6. On January 9, 2006, DNR Field Office 4 received 2 anonymous complaints that manure solids from Mr. Rupiper's feedlot were in the ditch near his feedlot. DNR Field Office 4 investigated the complaint and found that Mr. Rupiper had removed the solids from the low area leading from his lot to the ditch. He had also removed some of the manure from the ditch, but some of the manure was still in the ditch.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NEAL RUPIPER

7. On January 12, 2006, DNR issued a Notice of Violation to Mr. Rupiper for the violations noted during the investigation of the Brushy Creek fish kill. The letter cited water quality and prohibited discharge violations. The letter also informed Mr. Rupiper further enforcement action may follow. A copy of the Report of Investigation was sent to Mr. Rupiper on January 13, 2006.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.401(1) and 567 IAC 65.101(1) require the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state. DNR Field Office 4 found evidence that manure solids from Mr. Rupiper's facility went into a tributary of Brushy Creek. The above-facts disclose a violation of this provision.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. A permit has not been issued for this facility and DNR Field Office 4 found evidence of the discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR Field Office 4 observed evidence of manure solids from Mr. Rupiper's facility in a tributary of Brushy Creek. The above-facts disclose a violation of one or more of these criteria.

V. ORDER

THEREFORE, the DNR orders and Mr. Rupiper agrees to do the following:

1. Mr. Rupiper shall submit a Plan of Action for manure controls to DNR Field Office 4 within 30 days from the date the Director signs this administrative consent order;
2. Mr. Rupiper shall complete the manure controls within 90 days from the date the Director signs this administrative consent order and shall notify DNR Field Office 4 within 10 days of completion; and

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NEAL RUPIPER

3. Mr. Rupiper shall pay a penalty of \$4,500.00 in accordance with the following payment plan. If any of the said payments are not received in accordance with the plan, the remaining portion of the penalty shall be due immediately.

✓ \$187.50 due June 10, 2007	\$187.50 due June 10, 2008
\$187.50 due July 10, 2007	\$187.50 due July 10, 2008
\$187.50 due August 10, 2007	\$187.50 due August 10, 2008
\$187.50 due September 10, 2007	\$187.50 due September 10, 2008
\$187.50 due October 10, 2007	\$187.50 due October 10, 2008
\$187.50 due November 10, 2007	\$187.50 due November 10, 2008
\$187.50 due December 10, 2007	\$187.50 due December 10, 2008
\$187.50 due January 10, 2008	\$187.50 due January 10, 2009
\$187.50 due February 10, 2008	\$187.50 due February 10, 2009
\$187.50 due March 10, 2008	\$187.50 due March 10, 2009
\$187.50 due April 10, 2008	\$187.50 due April 10, 2009
\$187.50 due May 10, 2008	\$187.50 due May 10, 2009

VI. PENALTY

1. 2005 Iowa Code Supplement section 459A.502 and Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. Rupiper is working on the manure control system at his facility and any economic benefit Mr. Rupiper may have received is minimal. Therefore, no economic benefit is assessed for these violations.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to Brushy Creek, including dead fish. Multiple rule or statutory provisions were violated including discharge to water of the state, failure to maintain the minimum manure controls, and violation of water

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NEAL RUPIPER

quality standards. The violations threaten the integrity of the water quality program. Additionally, a large amount of DNR staff time was expended in investigating the Brushy Creek fish kill. Therefore, \$3,000.00 is assessed for this factor.

Culpability – All feedlot operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. In August 2005, Mr. Rupiper was advised of the potential problems at his facility and that a discharge to Brushy Creek could occur. Mr. Rupiper failed to take any steps to avoid a discharge to Brushy Creek. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Neal Rupiper. For that reason, Mr. Rupiper waives the right to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 6 day of
June, 2007.



NEAL RUPIPER

Dated this 11 day of
June, 2007.

#56849; DNR Field Office 4; Kelli Book; Ken Hessenius; EPA; VIII.D.1.b, VIIL.D.3.a